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mere act of destruction raises no presumption one way or the other. As the burden of proving the will is on the proponents, this appears in effect to be saying that there is a presumption of intestacy. The proponents have to show that the revocation has been revoked, and in order to do this they must prove, as has been suggested, some fact other than the mere destruction of the second will *animo revocandi*.

THE LIABILITY OF TELEGRAPH COMPANIES TO AN ADDRESSEE. — There has been considerable conflict of opinion over the legal status of telegraph companies. In some jurisdictions they are treated as common carriers, while in others they are permitted to contract against liability for negligence. 15 HARVARD LAW REVIEW, 158. A difference of opinion exists also as to their relations to the sender of a message, some courts holding them to be his agents, *Western Union Tel. Co. v. Shotter*, 71 Ga. 760; others treating them as independent principals, *Shingleur v. Western Union Tel. Co.*, 72 Miss. 1030. The greatest diversity of opinion, however, has arisen where liability to the addressee has been brought into question, the cases falling into two classes; one, where there has been a failure or delay in delivery, the other, where there has been a mistake in the transmission. Although no case of the first class seems to have arisen in England, the English courts have denied a recovery in the second class on grounds that would preclude a recovery in the first. *Playford v. United Kingdom Tel. Co.*, L. R. 4 Q. B. 106. In this country, however, recovery has been given in both classes. The decisions in the second class may be supported as grounded in tort. 14 HARVARD LAW REVIEW, 193, note 1. The principle on which the addressee in the first class can recover is more obscure. A recent Texas decision, following the majority of American cases, bases his recovery on contractual grounds. *Western Union Tel. Co. v. Norris*, 60 S. W. Rep. 982. The addressee is commonly treated as beneficiary, and on the doctrine of *Lawrence v. Fox*, 20 N. Y. 268, is allowed to sue in contract. *West v. Western Union Tel. Co.*, 39 Kan. 93. This doctrine, however, is itself anomalous, is repudiated in several jurisdictions, and is nowhere applied when the third party is merely incidentally benefited. 71 Amer. St. Rep. 176. Upon this last ground one court at least has refused to apply the doctrine in an action by the addressee, even though the message was one engaging his services. *Postal Telegraph Cable Co. v. Ford*, 117 Ala. 672. If this, then, be the true principle, it follows that the right of the addressee is much more qualified and restricted than has been supposed.

In analogy to a theory invoked to support *Lawrence v. Fox*, *supra*, it has been suggested that the sender makes the contract with the telegraph company as agent for a disclosed principal, the addressee. *De Rutte v. New York, etc., Tel. Co.*, 1 Daly, 547. Such a theory may be resorted to where the sender acts primarily in the interests of the addressee. In the ordinary case, however, where he acts for himself or for a third party, such an agency cannot be implied except as a legal fiction, unwarranted by the facts. *Postal Telegraph Cable Co. v. Ford*, *supra*.

Although, as has been pointed out, the addressee may recover in tort for negligent transmission, in the absence of statutory provision no decisions have been found allowing such an action for failure to deliver, and some courts expressly deny a tort liability in such cases. *Russell v.*

Western Union Tel. Co., 57 Kan. 230. There are *dicta* that telegraph companies owe a duty to all persons beneficially interested in the transmission of the message, but these are negated by decisions holding that one in whose interest a telegram is sent cannot recover unless he is addressee or sender. *Western Union Tel. Co. v. Fore*, 26 S. W. Rep. 783 (Tex.). If the duty of telegraph companies faithfully to transmit messages extends to the addressees it would result in a liability which would be unique in the law of torts, and a liability denied in the analogous cases of common carriers, *Ogden v. Coddington*, 2 E. D. Smith's Rep. 317, 327. No satisfactory reason, therefore, has yet been found to support a recovery by the addressee of an undelivered telegram except in cases where an agency fairly can be implied from the facts, or where the doctrine of *Lawrence v. Fox*, with all its restrictions, can be invoked. The decisions in such states as Massachusetts, where *Lawrence v. Fox* is not followed, and New York, where it is greatly restricted, will be awaited with interest.

MEASURE OF DAMAGES IN QUASI-CONTRACT. — Although express contracts and quasi-contracts are essentially different, courts have not been careful to keep them distinct, and, consequently, much confusion has resulted. This is very evident in the treatment of damages, as courts have often allowed these actions to run together at this point. In view of the similarity of cases arising in each form of action such a result is not remarkable. For instance, in a suit on an express contract, the defendant was very early allowed to show, in recoupment of damages, the amount he had suffered by a non-essential breach on the plaintiff's part. *Cutler v. Close*, 5 C. and P. 337. A similar case was one where the plaintiff, because of the non-performance of a condition precedent or a material breach, could not sue on his express contract, although he had furnished the defendant with some article of value. To avoid an unjust result, courts have allowed the plaintiff to recover in quasi-contract because of the unjust enrichment of the other party. In the average case, the fair value of the finished article was the contract price, and so the most expedient way of fixing the value ordinarily was to deduct from the contract price whatever was needed in order to finish the article according to specifications. *Kelley v. Town of Bradford*, 33 Vt. 35. This, it will be noted, was similar to the measure of damages in a contract action. However, in later cases in quasi-contract, the court, in adopting this method of assessing the amount, failed to notice that it was only a means to an end, that is, to find the value of the product. As a result the aim of the action was lost sight of, and in regard to the damages such cases were treated as if they were actions on express contracts. *Hayward v. Leonard*, 7 Pick. 181.

Because of this fact, a recent Massachusetts case is of value, not only for its accurate result but also for its sound reasoning. A plaintiff, unable to recover on an express building contract, sued in quasi-contract on the common counts. Soon after completion, the building became worthless, but the referee was unable to find whether the decrease in value was due to the plaintiff's breach or to other causes. The plaintiff claimed the contract price, deducting whatever damage the defendant could show was due to this breach. The court held, however, that as the plaintiff was entitled to recover only what the building was worth